

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

NATE A. LINDELL,

Plaintiff,

v.

Case No. 19-CV-702

**JOHN KIND,
JOHN DOES, and
CHRIS HEIL,**

Defendants.

ORDER

Plaintiff Nate A. Lindell, a state prisoner who is representing himself, filed a complaint under 42 U.S.C. § 1983. On July 18, 2019, U.S. District Judge Lynn Adelman screened the complaint and granted Lindell's motion for leave to proceed without prepaying the filing fee (*in forma pauperis*). (ECF No. 10.) On the same day, the case was referred to Magistrate Judge David Jones for pretrial proceedings. Lindell is proceeding on claims against defendants Heil and Kind for allegedly transferring him, and for conspiring to transfer him, to another institution in retaliation for him writing articles about the conditions of confinement in segregation at Green Bay Correctional Institution and for filing cases. (ECF Nos. 10, 13.) Due to Judge Jones's unavailability, the case was referred to this court for pretrial case management on September 24, 2019.

The defendants have filed a motion to revoke Lindell's *in forma pauperis* status because he incurred three "strikes" before filing this case. (ECF No. 21 at 3.) Under the Prison Litigation Reform Act (PLRA), a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis*,

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The defendants identify two district court actions and one appeal in which Lindell purportedly incurred "strikes." (*Id.* at 3.) Lindell has not responded to the defendants' motion.

In *Lindell v. Pollard*, Case No. 19-cv-255-LA-WED (E.D. Wis.), this court issued an order on January 13, 2020, granting the defendants' motion to revoke Lindell's motion to proceed without prepaying the filing fee (*in forma pauperis*) because he has incurred four strikes, three of which the defendants describe in this case. The court adopts the reasoning set forth in that order and determines that Lindell has incurred strikes in the following cases:

Strikes 1 and 2: *Lindell v. Huibregtse*, Case No. 05-C-3-BBC (W.D. Wis.) (court of appeals amended judgment to dismiss with prejudice all claims as frivolous or malicious on October 31, 2006); *Lindell v. Huibregtse*, 205 F. App'x 446, 450 (7th Cir. 2006) (appeal dismissed as frivolous on October 31, 2006).

Strike 3: *Lindell v. Esser*, Case No. 13-cv-563-WMC (W.D. Wis.) (case dismissed for failure to state a claim on April 1, 2015).

Strike 4: *Lindell v. Huibregtse*, 549 U.S. 1336 (2007) (petition for certiorari dismissed as frivolous or malicious on April 16, 2017).

Lindell has incurred four strikes and is not under imminent danger of serious physical injury. Thus, § 1915(g) bars him from proceeding without prepaying the full filing fee (*in forma pauperis*). The court will revoke Lindell's *in forma pauperis* status and direct him to pay the balance of the \$400 filing fee. If Lindell does not pay the rest of the filing fee, the court will recommend that this case be dismissed.

THEREFORE, IT IS ORDERED that the defendants' motion to revoke Lindell's *in forma pauperis* status (ECF No. 21) is **GRANTED**, and Lindell's leave to proceed *in forma pauperis* is **REVOKED**.

IT IS FURTHER ORDERED that Lindell must pay the remainder of the filing fee (\$398.83) by **March 20, 2020**, or this case may be dismissed.

Dated at Milwaukee, Wisconsin this 20th day of February, 2020.



WILLIAM E. DUFFIN
U.S. Magistrate Judge